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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,487	03/11/2004	Steven B. Dunn	MBI-1138DIV	6295

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/798,487

Applicant(s)

DUNN ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>1/9/05</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____.  |

### DETAILED ACTION

1. The non-final rejection mailed on 9/14/04 has been withdrawn in view of the following:
2. Claims 1-11,19 have been cancelled by Applicants.

### *Priority*

3. This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. A statement reading "This is a divisional of Application No. 10/370922, filed 2/20/03." should be entered following the title of the invention or as the first sentence of the specification. Also, the current status of all nonprovisional parent applications referenced should be included.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 12,13,15** are rejected under 35 U.S.C. 102(b) as being anticipated by Whitman (US 5292203).

For claim 12, Whitman teaches an apparatus for dispensing and applying a styptic material to a nail of an animal, comprising: a container 18 having a styptic material 28 disposed therein, said container having a dispensing opening 13 through which styptic material from the container may be dispensed; and a rigid application surface 20 that is adjacent to said dispensing opening.

For claim 13, Whitman teaches means 34,36 for advancing styptic material out of the container.

For claim 15, Whitman teaches wherein said means for advancing styptic material out of the container comprises a screw press mechanism 34,36.

6. **Claims 12,14,16,17** are rejected under 35 U.S.C. 102(b) as being anticipated by Dietz (US 4747842).

For claim 12, Dietz teaches an apparatus for dispensing and applying a styptic material to a nail of an animal, comprising: a container 10 having a styptic material 30 disposed therein, said container having a dispensing opening 14 through which styptic material from the container may be dispensed; and a rigid application surface 24,28 that is adjacent to said dispensing opening.

For claim 14, Dietz teaches wherein said rigid application surface is concave (the depression 28).

For claim 16, Dietz teaches wherein said concave application surface comprises a bowl shaped element 26,28 that is integral with said container.

For claim 17, Dietz teaches wherein said bowl-shaped element is angled with respect to a longitudinal axis of the container (at sides 26).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.


8. **Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz (as above).

Dietz's walls 26 appeared to be at an angle within the range of plus or minus 45 degrees. However, in the event that it does not, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the wall 26 of Dietz be angled with respect to a longitudinal axis of the container at an angle that is within a range of about plus 45 degrees to about minus 45 degrees, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn